Saskatchewan

Highways and Transportation

SUBMISSION TO

THE *CANADA TRANSPORTATION ACT* REVIEW PANEL

ON

RAIL, AIR, PORTS AND ROAD ISSUES

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I EXECUTIVE SUMMARY

The *Canada Transportation Act* (CTA) came into force in 1996. Saskatchewan's portion of the transportation network continues to be subjected to after-shocks as a result of the federal legislative framework.

Between aggressive management practices of several private sector stakeholders and the federal legislative framework that facilitates their activities, Saskatchewan's transportation network has had difficulty adjusting to the transition. The transition will take a number of years before the network has more stability. The need for continued federal support in both investment and legislative reform is necessary to ensure an effective transportation network in Saskatchewan.

As a result of the federal legislative framework, Saskatchewan represents one of the best examples of the impact of intermodal shifts in Canada. The CTA and other federal legislation facilitated the shift of freight from rail to road, from private to publicly funded infrastructure, and from federally regulated to provincially regulated infrastructure. The costs have been enormous to the Province, the communities and the people of Saskatchewan and their businesses. Saskatchewan is a geographically large province with a small population (approximately 3% of the Canadian population) who has been left to shoulder the burden of the intermodal shift.

This Submission contains so many recommendations that it is not expedient to incorporate them into the Executive Summary. Instead, reference is made to the Table of Contents for this purpose. However, certain themes permeate many of the recommendations:

- The CTA needs to incorporate a comprehensive vision for the transportation network;
- In partnership with the provinces and territorial governments, the federal government needs to provide meaningful and long-term funding towards the National Highway System;
- The federal government must take responsibility for transportation infrastructure under its jurisdictional authority. It cannot remove itself from this responsibility through devolution and expect the Provinces and Territories to fulfill the federal government's role in transportation. It is inadequate for the federal government to be an absentee landlord that regulates and receives rents;
- The federal government must commit to a viable and effective transportation network by ensuring that any new or amended regulations or legislation that it wishes to implement are subject to thorough analysis and consultations with stakeholders, and, in particular, the Provinces as its constitutional partners;
- Should the federal government implement changes or amendments to regulations or legislation, it should consider financial assistance to cover incremental costs for implementing such regulations or legislation; and
- The federal government's legislative and regulatory framework for transportation must balance the interests of federal carriers with provincial and territorial carriers, shippers and consumers.

II BACKGROUND

Economic and social changes are challenging the transportation sector, existing transportation infrastructure, communities, and governments in Saskatchewan as well as its people. Direct and indirect challenges to the transportation network are apparent from various sectors that, if not addressed, will impede Saskatchewan's present and future economic growth.

Changes in federal legislation, regulation and policy have significantly impacted Saskatchewan over the last six years because of modal shifts that occurred and continue to occur. The *Canada Transportation Act* (CTA), changes to agriculture transportation subsidies in 1995,[1] and rapid grain elevator consolidations have contributed to a transformation in the agriculture sector in Saskatchewan. Saskatchewan had an estimated 450 grain delivery points in 1996. By July 31, 2001, it is expected that the total number of Saskatchewan primary grain delivery points will be reduced to less than 100.[2]

The federal policies and legislative framework that facilitated elevator consolidation and rail line abandonment have also occurred in the same timeframe as changes in cropping practices and mix of crops that are grown. The cumulative effect of these policies and changes in farming practices has increased haul distances and heavy truck traffic volumes that negatively impact on provincial and municipal roads. It is estimated that the average haul distance for delivery of grain from producer to grain delivery point will increase from 26 km in 1993 to 53 km by 2005.[3]

Additional costs have been incurred at public expense to provide a road network supportive of the new grain transportation model. The annual incremental cost of additional grain haul on provincial roads as of 1997 was $50 million.[4] It is expected that this cost to provincial taxpayers will rise an additional $20 million per year by 2001.[5]

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[1] This reference refers to the Western Grain Transportation Adjustment Fund that compensated western provinces for loss of the Crow Freight Rate Subsidy. There were four components to this pay-out: freight cost pooling assistance, dehydrated alfalfa and compressed hay financial assistance, the Canada Agri-Infrastructure Program, and a direct pay-out to producers.

[2] See Saskatchewan Wheat Pool Press Releases, *Saskatchewan Wheat Pool to Strengthen Operations* (Regina, March 7, 2000) posted at http://www.swp.com/releases/releases/000307.htm ; and *Pool Announces Primary Elevator Consolidation Program* (Regina, September 15, 1998) posted at http://www.swp.com/releases/releases/980915b.htm to demonstrate the rapidity of elevator consolidation in Saskatchewan.

[3] Saskatchewan in conjunction with the Associations of Rural and Urban Municipalities (SARM and SUMA), *Parallel Process on Roads: Saskatchewan Road Impact Analysis* (Regina, October 1999) at p.12.

[4] *Ibid*, at p.19.

[5] *Ibid*, at p.19. Saskatchewan appreciates that bilateral negotiations are occurring on the new federal Prairie Grain Roads Funding Program (PGRF) announced by the federal government on June 16, 2000. This program is in addition to the five-year Canada Agri-Infrastructure Program (CAIP) that will be concluding in March 2001. The Prairie Grain Roads Program provides Saskatchewan with a total of $106.8 million over five fiscal years commencing 2001-02 and will provide some relief to the publicly funded road infrastructure network in the prairies for roads affected by grain-haul. However, recent announcements of accelerated elevator consolidations are an indication that the shift of grain from the branchline rail system to the road system in rural Saskatchewan is accelerating. Many of Saskatchewan's highways, particularly the TMS highways, were never designed to carry heavy truck traffic.

Other direct challenges to the transportation network come from within the transportation sectors. Mergers have and will continue to have impact on Saskatchewan. Airline mergers have raised concerns about what service Saskatchewan will receive due to its small population base even though demand for quality air service at reasonable prices is expected to grow for personal and business purposes. In addition, Western Canada has two Class I Railways (Canadian National [CN] and Canadian Pacific [CP]) that have entered into co-operative agreements between themselves as well as with American rail carriers and are contemplating the consolidation of their operations with other Class I rail carriers.[6] Saskatchewan is very concerned about such rail mergers since the outcome would directly affect the Province's ability to support and grow those industries dependent upon a competitive rail network.

Meanwhile, growing e-commerce, economic diversification and trade are driving demand for air cargo/courier services as Saskatchewan residents and businesses access markets that were previously unavailable. There is expectation by consumers and businesses for "just in time" delivery.[7] As new markets are opening for "just-in-time delivery", the existing rail system is too cumbersome to effectively participate.

Various trends are emerging in the rail sector. Firstly, CN and CP are abandoning their higher cost branchlines. Secondly, railway revenues for the six Class I railways in North America were more than $55 billion (Canadian) while revenues from truck freight exceeded $100 billion in 1999.[8] Unless railways change their business strategies, their share of the transportation network profits will become increasingly smaller and specialized in bulk commodities that cannot be transported by any other means than rail. The consequences may also be that the remainder of the transportation network's profits will be absorbed between the trucking and air sectors.

The trucking sector is also facing changes. Technological developments, known as intelligent transportation systems (ITS) which include "weigh-in-motion" capacities, have enhanced productivity and customer services through improved and expedited passage across provincial, state and international borders. North-south trade is increasing at a rate faster than east-west trade. Saskatchewan recently completed a two-year study measuring major border crossing movements between Saskatchewan and the states of North Dakota and Montana. Results from the North Dakota/Saskatchewan surveys show that highways connecting Saskatchewan and North Dakota serve primarily as corridors for trade purposes with destinations other than Saskatchewan or North Dakota.[9]

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[6] Canadian National Press Release, *Canadian National, Canadian Pacific railway agree to share routes in Canada and the United States* (Montreal, July 21, 2000) posted at http://www.cn.ca/cnwebsite/cnwebsite.nsf/public/en_News20000721; *CN eyes possible CPR bid: Railroad merger: Tellier calls for some debate on regulatory framework* (Financial Post, January 24, 2001); *CN buy of CPR would face uphill battle: Tellier shows interest: Ottawa, shippers and unions may oppose any monopoly* (Financial Post, January 25, 2001)

[7] See K. Krause, "Same-Day's Time", *traffic World* (July 3, 2000), at pp.31-32; D. Akin,"Get ready for boom in online shipping, analyst says", *WESTAC Information Services*, Source: *National Post* (Toronto, October 12, 2000).

[8] Canada Pacific Railway, *Canada's Railways: Achieving Potential: A General Brief to the Canada Transportation Act Review Panel* (December 2000).

[9] Saskatchewan, *North Portal/Portal Border Crossing Studies, 1998 Annual Report* (Regina, April 1999) and Saskatchewan, *North Portal/Portal Border Crossing Study, 1999 Annual Report* (Regina, January 2000).

Some effort has been made to assist the transportation network to adapt to these challenges through various federal and/or federal-provincial programs. Recent examples of efforts to develop programs to assist the transportation network are the Canada-Saskatchewan Agri-Infrastructure Program (CAIP), the Airport Capital Assistance Program (ACAP), and the Prairie Grain Roads Funding Program (PGRF). Each of these programs provides some temporary financial relief to the Province, municipal governments or the private sector.

The various federal and/or federal-provincial programs in existence do not meet current transportation infrastructure maintenance or construction needs. Although each transportation mode needs infrastructure investment to varying degrees, roads demonstrate the most conspicuous need for investment. Using roads as an example, the Council of Ministers Responsible for Transportation and Highway Safety conducted the National Highway Program (NHP) Study that recommended minimum design and engineering standards for the National Highway System (NHS). Highways on the NHS total 24 373 km across Canada.[10] The NHS in Saskatchewan includes Highway Nos. 1, 7, and 16, and portions of Highway Nos. 6, 11 and 39 which make up 2 087 km or almost 9% of the total NHS.[11] Recent NHP Study updates have estimated that $952.3 million is required in Saskatchewan for capital improvements to meet the NHP proposed standards. The NHP Studies indicated that the estimated cost of all investments on the NHS to meet the proposed standards is $17.3 billion (1998 dollars) nationally.[12]

These studies acted as part of the basis for the National Transportation Investment Strategy (NTIS). Despite efforts by the provincial and territorial governments to encourage the federal government to adopt the NTIS and provide meaningful federal funding towards road infrastructure, the efforts have not been overly successful as the federal government only committed $600 million towards highways in its February 2000 budget.[13]

Although efficient interprovincial and international transportation corridors are essential for prosperity, Canada continues to lag behind the United States of America (U.S.) and other major trading nations in making significant new investments to improve these corridors. On June 9, 1998, the U.S. President Clinton endorsed the *Transportation Equity Act for the 21st Century* (TEA-21) authorizing highway, highway safety, transit and other surface transportation programs for the next six years.[14] TEA-21 includes assurance of a guaranteed level of federal funds for surface transportation. It also continues and improves current programs with new initiatives to improve safety, protect and enhance the environment and advance "America's economic growth and competitiveness domestically and internationally through efficient and flexible

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[10] Council of Ministers Responsible for Transportation and Highway Safety, *The National Highway System: Condition and Investment Needs, 1998 Annual Report*, prepared by the National Highway Policy Update Project Steering Committee (September 1999) at pp.17 to 19.

[11] *Ibid*, at p.17.

[12] *Ibid*, at p.22. Saskatchewan realizes that the federal government has not fully endorsed the NHP standards. Consequently, the value of this investment may be adjusted based upon the standards adopted by the federal government in conjunction with the Provinces and Territories.

[13] Canada, Finance Canada, *Budget 2000, Chapter 5: Making Canada's Economy More Innovative* (Ottawa, February 2000) at p.9 and posted at http://www.fin.gc.ca/budget00/bpebpch5_le.htm .

[14] See *TEA-21 – Transportation Equity Act for the 21st Century: A Summary – An Overview* posted at http://www.fhwa.dot.gov/tea21/sumover.htm .

transportation". Funding from TEA-21 has benefited border crossings and has also emphasized deployment of ITS to help improve operations and management of transportation systems and vehicle safety.[15] In addition, Congress passed the *Wendall H. Ford Aviation Investment and Reform Act for the 21st Century* in 1999 that "increased federal commitment to funding aviation safety, the modernization of air traffic services and airport development."[16]

Canada is increasingly disadvantaged in the global market due to its relative funding in comparison to the American funding available through TEA-21 and the *Wendall H. Ford Aviation Investment and Reform Act for the 21st Century*. Saskatchewan notes that failure to adequately fund and regulate the transportation network will result in transportation movements being directed North-South as opposed to the historic East-West trade routes. While the transportation network and how it is regulated needs to be reviewed and re-defined to meet the demands of the 21st century, the problems plaguing the transportation network will not be resolved solely through federal infrastructure investment programs.

The existing transportation network is a product of its legal environment. The *Constitution Act, 1867*, [17] subsequent judicial interpretations of the division of powers between the federal and provincial governments, and acts or omissions of the federal and/or provincial government and/or the private sector (along with technological influences) have created the existing transportation network. Professor Peter Hogg writes that the *Constitution Act, 1867* has been interpreted whereby:

> Jurisdiction over trains, buses, trucks, taxis, limousines, pipelines, and electricity transmission lines depends primarily on whether they are operated as part of an interprovincial (or international) undertaking, in which case jurisdiction is federal under s.92(10)(a), or whether they are operated as part of an intraprovincial undertaking, in which case jurisdiction is provincial under s.92(10). Some intraprovincial undertakings, including many local railways, have been brought under federal jurisdiction by exercise of the declaratory power under s.92(10)(c).[18]

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[15] *Ibid.*

[16] See "Remarks as prepared for delivery: U.S. Secretary of Transportation Rodney Stater The Secretary of States Open Forum Washington, D.C., January 5, 2001" posted at http://www.dot.gov/affairs/010501sp.htm at about p.4. This is not to say that the U.S. has an insurmountable advantage in transportation. With many more states, and a much more fractured federal presence, the U.S. has significant coordination problems.

[17] *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c.3 (formerly the *British North America Act, 1867*).

[18] P. Hogg, *Constitutional Law of Canada, 2nd Ed.* (Toronto: Carswell Company Ltd., 1985) at p.494.

The federal government has discretion to assert legislative and regulatory control over matters that it declares to be "of national interest"[19].

Canadian transportation infrastructure is trapped in a legislative and funding framework that is extremely dated (over forty years old) and no longer meets transportation needs. Each transportation mode (road, rail, air and marine) relies on infrastructure that is subject to different legislative authorities and funding structures. In reviewing the Table on the following page, it becomes apparent that the federal government has retained regulatory control over air and ports yet has divested its responsibility for operating and maintaining infrastructure. As it has divested itself of these responsibilities, it has shifted the costs of infrastructure maintenance and development to the Provinces, local airport and port authorities, and the private sector.

[19] The reference to "of national interest" throughout this document refers to s. 92(10)(c) "Works … declared …to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces" and/or also through the "Peace, Order, and good Government of Canada" clause in s.91of the *Constitution Act, 1867*.

Legislative Authority and Funding Available to Infrastructure

Type Of Infra-Structure	Infrastructure's Purpose	Owner Of Infrastructure	Legislative Authority Over Infrastructure (*Constitution Act, 1867*)	Funding Available To Infrastructure
Roads	- Local - Provincial - East-west and north-south trade corridors	Provincial or municipal (with exceptions)	Provincial regulatory jurisdiction (with exceptions) via s.92(10) "Local Works and Undertakings"	Predominantly paid for by provincial taxpayers. May receive direct and/or indirect funding from federal government
Air	- Local - Provincial - East-west and north-south trade corridors	Either federally owned and leased to local airport authorities or owned by local authority; privately owned (including by Province and municipalities)	Federal regulatory jurisdiction via s.91 "Peace, Order & good Government"[20]	National airports (Saskatoon & Regina) are self-financed. Regional airports with scheduled service are eligible for federal funding through ACAP. Other airports are financed by their owners.
Rail[21]	- Local (branchlines) - Provincial - East-west and north-south trade corridors	Privately owned	- If part of an interprovincially operated company (e.g. CN/CP), federal jurisdiction via s.92(10)(a) - If a shortline operating intraprovincially, provincial jurisdiction via s.92(10) with exceptions	Privately funded
Ports	East-west and international trade corridors	Federally owned and leased to local port authorities or owned by local authority	Federal regulatory jurisdiction via s.92(10)(a)	Privately funded

[20] See P. Hogg, *Supra*, note 18 at p.495, for the history of how aeronautics is governed through s.91's "Peace, Order & good Government" clause in the *Constitution Act, 1867*.

[21] See K. Cruikshank, *Closed Ties, Railways, Government and the Board of Railway Commissioners, 1851-1933* (Montreal: McGill-Queen's University Press, 1991) at chapters 3 and 4 that discuss the early history of railways in Canada and the connections between "Public Money, Private Rights" and "Public Authority, Private Rights". Railway infrastructure has been subsidized by federal, provincial and municipal governments in addition to public ownership of railways (ie: CN) plus injections of public funds (ie: branchline rehabilitation funding in the 1970s).

Interactions between and amongst the modes are both competitive yet complementary. For example, the rail system relies upon other modes such as trucking to provide commodities for rail to transport. As transportation modes become more interdependent and competitive, government regulatory frameworks must be considered and applied fairly between the modes.

Inconsistent application of transportation policies occurs within the same mode. For example, when the Constitution was drafted in 1867, railways were perceived as nation-building and nation-uniting vehicles. The federal government was actively involved in promoting, building and regulating the railways (which have since emerged as CN and CP), particularly considering their importance in transporting people and commodities until highways and airlines emerged as competitive alternatives after World War II. Despite changes in the demand for CN and CP's lines that have created two main lines that link Saskatchewan interprovincially and one main line that links Saskatchewan with the U.S., branchlines owned by CN/CP now act as "feeders" for local purposes into CN/CP's main lines. However, branchlines that act as "feeders" for local purposes owned by provincially incorporated railways are not deemed "of national importance". Different laws and legal remedies and also federal or provincial programs apply differently depending on federal or provincial incorporation which may cause competitive disadvantages.

There is also inconsistent application of policies between modes. For example, small airports with scheduled service in Saskatchewan act as "feeders" to Saskatoon or Regina yet are treated as part of the "national air network" and benefit from federal programs (e.g. ACAP). Aside from historical precedent, it is difficult to understand the rationale justifying that small airports that operate as "feeders" are of sufficient importance to be treated as part of a national network and subject to federal law, but small provincially incorporated branchlines that operate as "feeders" are not treated as being of sufficient importance to be part of a national network. Similarly, there is little rationale in treating railways (owned by CN and CP) that traverse interprovincial boundaries as operating under federal authority, whereas highways that also traverse interprovincial and international boundaries are deemed provincial authority. Both are trade corridors for interprovincial and international purposes and should be treated similarly.

Even though each of the modes serves a role as a north-south and/or east-west transportation corridor, the federal government has also reduced its financial responsibility for national and international corridors whose primary purpose is trade. These corridors are a direct federal responsibility but the funding of infrastructure between federal and provincial governments has become extremely unbalanced. It is notable that, in commenting on the ongoing devolution of airports, the Auditor General's report commented that Transport Canada had yet to define its post-transfer role as overseer of the National Airport System (NAS) and guarantor of the NAS' integrity and viability.[22] What role should the federal government play in transportation?

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[22] Canada, Office of the Auditor General, *2000 Report of the Auditor General of Canada* (Ottawa, October 2000), at chapter 10.

III SASKATCHEWAN'S VISION

Saskatchewan's vision was initially introduced in its October 20, 2000 Submission. Saskatchewan envisions a national regulatory environment that supports healthy working relationships between industry and transportation services. These relationships are founded upon and require a regulatory environment that supports three key principles: *competition, co-operation, and commitment.*

Competition is the incentive for high efficiency, improved service levels, and innovation. In a modern economy, no part of the transportation network can be insulated from competition. This has been recognized by Parliament in the *National Transportation Act, 1987* (NTA, 1987) and in s. 5(b) of the CTA that states, "competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services".

Co-operation is always inherent to some degree in competition. In a traditional supply chain environment, each firm will co-operate to the extent necessary to maximize its own efficiency and profits. However, co-operation in a value-adding supply chain is much broader. Co-operation channels competitive measures towards solutions that enhance the efficiency and profits in the entire supply chain rather than 'destructive' actions that simply allow one part of the chain to extract benefits from other parts. A major transition is occurring in management strategy and practice towards a recognition that:

> Success in the marketplace is as much a function of the ability to cooperate as it is of the ability to compete. Rather than competing head-to-head against each other, firms have increasingly come to believe that they compete by learning, partnering, thinking, redesigning, and innovating faster than those they compete against.[23]

Commitment is the foundation of a sound partnership where, to be successful over time, each partner must be willing to invest in long-term relationships with other partners in the supply chain to jointly create and share opportunities, efficiencies, and profits. Commitment is key in modern resource extraction industries that require large sunk costs by the shipper and often by the carrier as well. These industries are a large part of the western provinces' economies.

Consistent with this vision, Saskatchewan seeks a transportation network that provides travelers and shippers with quality, timely and safe services at a reasonable cost and that contributes to the economic and social development of the province. Saskatchewan supports the concept that communities should be the driving force behind an improved transportation system. A viable, cost-effective and competitive transportation network is not merely essential for Canada's continued prosperity, but is critical to ensuring that the publicly-owned infrastructure is preserved from further deterioration and remains sustainable for future generations. Further, a competitive transportation network ensures that shippers are encouraged to allocate resources into the best opportunities to maximize consumer and producer surpluses and best grow the overall economy.

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[23] J. Liedtka, "Constructing an ethic for business practice: competing effectively and doing good", *Business and Society*, (September 1998) at p.254.

The transportation network must be responsive to adapt to existing and future challenges. A renewed transportation network cannot occur through policies and infrastructure investments made in isolation by individual governments or firms. Canada needs a transportation policy that encompasses a shared vision for the future and that promotes and maintains a high quality network while promoting innovation and competitiveness within and amongst modes.

IV REVIEW OF THE *CANADA TRANSPORTATION ACT* AND OTHER FEDERAL LEGISLATION'S PERFORMANCE

The Minister of Transport has requested that consideration be given to "Other Issues" within the Panel's Terms of Reference.[24] As is evident from the earlier Parts of this Submission, Saskatchewan believes that the manner in which the federal government carries out its roles and responsibilities in the transportation network will not meet the demands that will be placed upon the network due to globalization, e-commerce and other technological developments.

In this Part, Saskatchewan will discuss whether the framework sustains "the high levels of capital expenditures to enhance productivity and promote innovation" and whether it "provides government with the necessary powers to support sustainable development objectives". In addition, this Part will explore the successes and shortcomings of the CTA and other federal transportation legislation and their performance in achieving the goal of a "safe, economic, efficient, and adequate" transportation system for Canadian shippers and travelers as a means of determining appropriate strategies for legislative changes.

1) The CTA Review Panel's Terms of Reference

a) The Overall Effectiveness of the Current Legislative and Regulatory Framework in Sustaining the High Levels of Capital Expenditures Required to Enhance Productivity and Promote Innovation

In addressing this Term of Reference, Saskatchewan will consider roads as a public sector, air and ports as quasi-public sectors, and rail as a private transportation sector. The current federal legislative and regulatory framework affects each mode differently.

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[24] Preservation of urban rail corridors for mass transit use is not perceived as a major issue at this time. Suggestions have been made that urban rail corridors could be used for alternate transportation purposes such as footpaths and bikeways and these alternatives should also be considered.

i) Road Sector

Recommendation: In partnership with the provincial and territorial governments, the federal government needs to provide meaningful and long-term funding towards the National Highway System

Saskatchewan has the most extensive provincial and municipal road network in Canada. The provincial highway network is 26 100 km in length and the rural municipal network is 158 900 km for a total of 185 000 km[25]. Approximately 7 000 km of this system serves national and provincial needs (primary system) while the remainder serves provincial and local transportation needs (intraprovincial system).

Saskatchewan's share of the NHS is 2 087 km or almost 9% of the NHS which is used for north-south and east-west trade corridor purposes. The Table below describes current budget allocation by Saskatchewan and the federal government towards highways that are acknowledged as part of the NHS in Saskatchewan:

Total Expenditures ($ in Millions) on the National Highway System within Saskatchewan

	SK Expenditures	Federal Expenditures	Total Expenditures
1989/90	41.3	5.4	46.7
1990/91	38.8	1.8	40.6
1991/92	25.3	0.5	25.8
1992/93	18.2	0.0	18.2
1993/94	32.5	8.0	40.5
1994/95	29.0	8.1	37.1
1995/96	24.4	5.7	30.1
1996/97	17.8	6.1	23.9
1997/98	20.1	2.4	22.5
1998/99	26.9	0.0	26.9
1999/00	33.1	0.0	33.1
2000/01	40.9*	0.0	40.9
2001/02	56.7*	0.0	56.7

* estimated

Part II of this Submission describes the provincial and territorial governments' efforts to have the federal government participate in discussions regarding meaningful federal investment in highway infrastructure. The federal, provincial and territorial governments have identified the north-south and east-west trade corridors through the NHS yet the federal government has only provided ad hoc funding for this infrastructure. Considering that the

[25] Saskatchewan, *Investing in Transportation: A Transportation Strategy for Saskatchewan People* (Regina, April 1997) at p.9.

federal government has constitutional responsibility for trade, interprovincial and international matters, it appears reasonable that the federal government would, at minimum, absorb road infrastructure costs proportionate to their usage for trade purposes.[26]

The existing federal transportation funding programs do not ensure strategic investment of scarce public funding in an integrated transportation network. With interprovincial and international truck traffic growing, the argument for the federal government to provide substantial financial funding towards the NHS is strengthened.

Recommendation: ***In consultation with the Provinces and Territories, Transport Canada should ensure that any new or amendments to regulations or legislation it wishes to implement are subject to thorough analysis to determine intermodal impacts on publicly funded infrastructure. If modal impacts are predicted and/or occur due to federal legislative or regulatory changes, federal financial assistance should be extended***

Saskatchewan's road network is approximately 185 000 km in length. The system consists of 11 700 km of paved highways; 8 700 km of TMS highways; 5 700 km of gravel highways; 53 000 km of rural grid, heavy haul and main farm access roads; and 105 900 km of land access and local land access roads.[27]

Saskatchewan's paved highways are deteriorating at an accelerating rate. Close to 4 000 km (44%) of the paved highway system are more than 5 years beyond their design life. This situation is leading to a rapid deterioration in the surface condition, is increasing the risk of widespread failure and is increasing the eventual cost of rehabilitating the pavements to an acceptable performance level.

The intraprovincial highways, particularly the TMS highways, are also experiencing significant failures. As a result of their limited structural capacity, many of the TMS highways have deteriorated to the point where patching is ineffective. The deteriorated state of the TMS highways is due to two main factors:

- TMS highways were not designed to carry heavy trucks and heavy truck hauls have increased significantly due to a modal shift from rail to road; and

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[26] An argument could be made that grain roads are a federal responsibility. Mr Justice W. Estey commented at p.45 of the *Grain Handling and Transportation Review, Final Report*:

> A more novel proposal (at least in this country) was advanced before this Review. The idea is that the federal government, who authorized the establishment of the rail system and under whose jurisdiction the railways have always operated, might be expected to assist the community in the maintenance of these "farm-to-market" roads also. As a matter of commerce between the provinces and international trade, it might be argued, with support in our history, that there is a federal interest in the protection of those engaged in this vital farm industry. If the cost of the transportation system becomes a transcending burden on the exporter, the federal interest is again revived in the preservation of a significant source of national revenue.

[27] *Supra*, note 25, at p.9.

- Significant capital expenditures have not been available for upgrading TMS highways to structurally paved highways which are capable of carrying truck traffic.

In the 1970s, Saskatchewan had 13 900 km of branchlines and almost 900 grain delivery points. There are 9 900 km of branchlines and approximately 500 elevator operating units today. By July 31, 2001, it is expected that the total number of Saskatchewan primary grain delivery points will be reduced to less than 100.

Although it could be argued that changes in the CTA in 1996 were made to encourage productivity and promote innovation in the rail sector and thereby sustain its capital expenditures, the consequences of the framework negatively impacted the publicly owned road sectors because of modal shifts. The changes in the CTA have permitted the railways to shed their inefficient branchlines so that they are more efficient with the consequence of this modal shift being paid by the Province and municipalities with public funding being used to repair roads damaged by freight. The intention of these legislative/regulatory changes may be justifiable but their consequences can be detrimental to the viability of other modes, roads in particular.

Although Saskatchewan's rural population is decreasing, truck travel has more than doubled since 1991 to 300 million vehicle-km and will likely double again by 2005. The tonne-km of grain hauled on Saskatchewan highways has more than doubled in the last few years and is anticipated to increase from approximately 2 billion tonne-km in 1999 to more than 3 billion tonne-km by 2005.[28]

Saskatchewan has been negotiating with the federal government to access funding for grain roads. The new federal Prairie Grain Roads Funding Program (PGFP) will contribute $106.8 million federal dollars for investment in municipal and provincial road infrastructure over a five-year period starting in 2001-2002. The new program provides Saskatchewan with an opportunity to:

- Expedite the transformation to a sustainable regional road system; and

- Enhance the strategic relationships with local governments and area transportation planning committees (ATPC).

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[28] *Supra*, note 3 at p.17. A contributing factor in the increased tonnage on Saskatchewan roads are changes in agricultural practices that encourage more organic, identity preserved and specialty crop production. Organic producers have forecast more than a 500,000 tonne container export program in 2001 – nearly double from the previous year. According to *The Future of Pulse Crop Transportation in Saskatchewan*, container shipments of bagged and bulk specialty crops are expected to grow by 32 percent in five years. Saskatchewan understands that identity preserved grain and oilseeds are also expected to have exponential growth. The changes in agricultural production are a response to transportation costs in the deregulated grain handling and transportation sector. All processed products travel longer distances by truck as container access is concentrated in Regina and Saskatoon or shipped to neighboring provinces.

The federal funding will be strategically invested in roads that are critical to the development of a sustainable road system for grain transportation in rural Saskatchewan. While the funding will assist the Province considerably, the five-year PGFP will not solve Saskatchewan's rural road and highway crisis. It will take longer for the province's road network to adapt to this modal shift than it will for the railways and/or grain companies to consolidate and reduce their infrastructure base. On completion of the five-year PGFP, additional annual funding of $50 million to $100 million will still be required for the provincial highway, the rural highway and grid road system.

Saskatchewan's experience where freight has been transferred from rail to road due to shifts in federal legislation and policy demonstrates the need for the federal government to be sensitive of its actions or omissions and their impacts upon provincial governments as well as other infrastructure owners. It also demonstrates the need for a transportation strategy that acknowledges and accommodates the impacts associated with modal shifts, both in freight and passenger sectors.

ii) Air Sector

Recommendation: ***Transport Canada should ensure that any new or amended regulations or legislation it wishes to implement are subject to thorough analysis and consultations with stakeholders, including the Provinces as its constitutional partners, and that Transport Canada should provide financial assistance to cover incremental costs for implementing such regulations or legislation***

The federal government has been imposing additional regulatory requirements upon airports since their devolution that were not imposed when the federal government ran those airports. An example is the proposed *Aircraft Emergency Intervention Services* regulation (CAR308). As a result of substantial pressure from airport operators, other stakeholders and the Provinces as its constitutional partners, the proposed regulation has been significantly modified. CAR308 now only affects one Saskatchewan airport at Prince Albert.

Saskatchewan is concerned about the possible extension of this regulation, and other similarly generated regulations, to smaller airports that are already strained because of limited financial resources.

Like many of the other Provinces and Territories, Saskatchewan supports the Civil Aviation Regulation Advisory Council (CARAC) Part III Technical Committee's recommendation to promote best practices within airport emergency planning, including financial assistance, by supporting the acquisition of emergency equipment as well as the development and implementation of an effective training program.

The financial viability of many of the small airports is already a problem. Their viability could be seriously compounded by the additional costs of implementing regulations that cannot be clearly justified as having a meaningful impact on safety. Saskatchewan recognizes that Transport Canada has provided some increased funding to the ACAP to help

fund the cost of CAR308. It is critical for Transport Canada to recognize the importance of providing adequate funding for regulatory initiatives that these airports are required to implement.

Recommendation: Transport Canada should undertake an independent review of its rental agreements in consultation with the airport authorities and other stakeholders with a view to ensuring that rents are fair and do not impair the financial viability of individual airport authorities

Although Saskatchewan supports the goals of the National Airport Policy, there is increasing concern about rents that airport authorities are paying or will pay to Transport Canada.[29] The Coalition of Concerned Airport Users (CCAU) claims that Transport Canada will receive $225 million in rent (gross) in the current year, which will grow to nearly half a billion by the end of the decade.[30] CCAU feels that the sums are too onerous and is advocating a freeze of rents at their present levels and development of rents through a new formula based on historical book value of the airports.

Although the Regina and Saskatoon Airport Authorities are not currently paying rent to Transport Canada, Saskatchewan is concerned that future rents be set at a reasonable level so that they do not hinder the airport authorities in providing quality service at a reasonable price, and thereby remain competitive with airports in the region.

The Regina and Saskatoon Airport Authorities have been financially affected by the rationalization and reduction of flights as a result of the recent merger between Air Canada and Canadian Airlines International Limited (CAIL). Although the merger is efficient from the carrier's perspective, it has reduced revenues for the Airport Authorities as fewer flights mean lower revenues from landing fees.

Recommendation: The Airport Capital Assistance Program's eligibility criteria and funding should be reviewed

Saskatchewan has several small airports that are not part of the National Airport System (NAS) but receive scheduled service and provide feeder service to the main NAS airports of Regina and Saskatoon. In addition, Saskatchewan has several other airports that do not receive scheduled commercial service but provide access on a regular basis using scheduled charter aircraft between settlements and mine sites in the north. These airports also support tourism, especially hunting and fishing, and help to generate income for northern residents, especially among First Nations People, in an area that traditionally has a very high unemployment rate. Some of these communities are so remote that the air sector is their only transportation access. These small airports are not self-financing because of low traffic volume yet access is crucial for social and economic development. They also form part of the airport system that provides feeder service to the two main airports in Regina and

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[29] The National Airport Policy provided for the transfer of the operation of airports to local airport authorities. The local airport authorities are perceived as more efficient and more responsive to local needs. They also have greater flexibility to make decisions that promote economic and social development in their regions.

[30] Coalition of Concerned Airport Users, *Issue Backgrounder: Federal Policy for Canada's Airports* (October 2000).

Saskatoon.

Although Saskatchewan has had success in accessing federal funds under the ACAP, the current level of funding at $35 million annually will not be adequate. More airports have been added to the ACAP (e.g. the Arctic airports in the Northwest Territories and Nunavut) but there has not been an increase in the funding level. It is anticipated that ACAP's current funding will not be adequate to meet project requests because of the higher construction, logistics, fuel and other related costs for Arctic airports.

iii) Ports Sector

Increased competition from U.S. and other foreign ports for bulk shipments and container movements is a major challenge facing the Canadian marine transportation system. [31] Infrastructure improvements that increase capacity utilization and enhance performance could benefit port users and customers through reduced marine transportation and handling costs and through improved access to markets.

Recommendation: Appropriate changes should be made in the Canada Marine Act to permit Port Authorities' access to innovative funding mechanisms to finance capital improvements

The *Canada Marine Act* restructured the operation and administration of Canada's ports system by giving Canadian Port Authorities increased financial flexibility to upgrade infrastructure and by diversifying services through more commercially oriented port operations. The ports have reduced their transaction times and overhead costs and have increased efficiency in the marine sector.

To assist ports in maximizing their productivity, it is recommended that amendments be made to the *Canada Marine Act* to permit ports innovative funding mechanisms to finance their improvements as a means of offsetting reductions in public funding. Saskatchewan, Alberta and Manitoba made a joint submission to the Standing Committee on Transport on Bill C-44 in November 1997 that the marine legislation "unduly limits the flexibility of port authorities to pursue commercial activities required to make them financially self-sustaining... [because] the borrowing and investment powers of port authorities are constrained". The joint submission recommended that "port authorities should be granted

[31] The September 1999 Transport Canada's Ports Task Force Report stated at p.51 that "lower capital investment charges and local taxation advantages enjoyed by Pacific Northwest Ports provide an incentive for investment in facilities that may attract Western Canadian bulk commodity exports".

wider powers in managing all port property and assets brought under their administration, subject to necessary ministerial consent and increased public accountability to safeguard the public interest."

Saskatchewan agrees with Great Vancouver Gateway Council's submission to the Review Panel that the

> Minister of Transport be required to establish procedures to expedite review of transportation infrastructure capital investment projects that enhance Canada's international trade competitiveness … [and] initiate a comprehensive review of inhibitors and obstacles to new transportation capital investment projects.[32]

The existing Act permits Canadian Port Authorities to enter into joint ventures with private sector groups (private-public partnerships). Port Authorities should be encouraged to enter into these partnerships. Appropriate mechanisms to improve the accountability of the Port Authorities may be required if they implement innovative financing arrangements.

Innovative funding mechanisms could include tax exempt revenue bonds.[33] Gross revenue charges payable to the federal government by port authorities should be examined during the statutory review of *Canada Marine Act* in or about 2003 to determine whether amendments are needed to reflect capital expenditures financed from port revenues or other financing mechanisms.

iv) Rail Sector

During most of Canada's history, Class I railways have been regulated as utilities. Over the past thirty-five years, the federal government has gradually deregulated the railways so that they are now privately owned companies that operate as commercial entities. As a result of the federal legislative framework, the Class I railways have become duopolies and the CTA must balance the powers of the railways and the captive shippers they serve. Rail competition is vital due to the geography of the prairie region. In the October 2000 Submission, Saskatchewan supported strengthening the competitive rail access provisions to enable shippers served by only one railway to gain access to other railways to ensure cost-effective service over the long-term.

Recommendation: Options should be examined for encouraging investment by the major carriers or other parties in the branchline system to make it a more cost-effective component of the grain logistics system where sufficient volumes exist to make shortline development viable

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[32] Greater Vancouver Gateway Council, *Serving the Nation's Trade, Towards a Transportation Policy for the 21st Century*, Submission to the *Canada Transportation Act* Review Panel (January 2001) at p.11.

[33] U.S. Port Districts have extensively used tax exempt special obligation bonds that provides a cost advantage to U.S. ports through lower capital investment charges. The Greater Vancouver Gateway Council noted in its 1998-2000 Business Plan that tax exempt bond financing would provide a less expensive source of funding to the bond issuer as well as providing income to the bondholder at a zero income tax rate.

The CTA created a positive investment climate in the rail industry. CN and CP Rail have invested approximately $8 billion[34] since 1996 to improve the quality of their infrastructure and equipment, including $1.5 billion (Canadian) in 2000.[35] The majority of this capital investment has been allocated to intermodal facilities and related infrastructure upgrades.

Saskatchewan is concerned that railways have made minimal capital investments in infrastructure to enhance the performance and efficiency of the grain collection system since the CTA came into effect in 1996. A 1997 study found that "the major shortcoming in the reform of line rationalization policy is the lack of incentive for such productivity improvement to take place on the Western grain network."[36] Considering the length of Class I infrastructure and facilities present in Saskatchewan, the Class I railways' overall capital investment in their Saskatchewan infrastructure is small relative to the contributions received from Saskatchewan exporters to the Class I railways' overall profits.

Saskatchewan recognizes that continued improvements in railway performance and efficiency will be needed to maintain the competitiveness of CN and CP Rail. The development of a seamless rail transportation system that benefits shippers by providing competitive, customer-oriented services is essential for improving market access for Saskatchewan products. Service improvements can be made without investing large sums of capital. New car allocation programs, information technology initiatives, and other logistics measures can increase the railways' competitiveness by offering service levels that better meet shippers' and customers' needs.

b) The Extent to which the Current Framework Provides the Government with the Necessary Powers to Support Sustainable Development Objectives

Saskatchewan emphasizes that "environment" is a broad term that includes biodiversity as well as concerns about compliance with the Kyoto Accord and its efforts to reduce greenhouse gas emissions. Harmonization of environmental goals through joint federal and provincial/territorial government efforts is important to maximize co-benefits associated with each other's actions.

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[34] See CN News Release, *NAFTA Competitiveness must be cornerstone of any new rail regulation, says CN* (December 1, 2000).

[35] Canadian National, *Initial Submission to the Canada Transportation Act Review Panel, Perspectives on Competitive Rail Access Issues* (October 6, 2001) at p.6.

[36] Railway Association of Canada, *Perspectives on Productivity and the Canadian Railway Industry* (April 1997) cited in CN's Submission to CTA Review Panel (November 2000).

Recommendation: Amendments to federal transportation legislation must not create regulations or internal conflicts that will negatively impact the ability of the federal, provincial and territorial governments to encourage sustainable development initiatives within the transportation sector

With Canada as a trade-reliant country that is geographically large and has a dispersed population and climatic extremes, maintaining an efficient transportation system is a significant challenge. Moreover, the transportation sector accounts for a significant percentage of Saskatchewan and Canada's greenhouse gas emissions. Achieving emissions reductions in the transportation sector will be a major challenge in Saskatchewan because of dependence on the automobile and the fuel requirements of the agricultural sector for off-road equipment.

On this basis, amendments to the CTA or any other federal transportation legislation must not create new regulations or internal conflicts that will negatively impact the ability of the federal, provincial and territorial governments to encourage sustainable development initiatives within the transportation sector. Federal transportation legislation should be assessed against the objective of encouraging sustainable development through energy efficiency, conservation, emissions reductions and alternative fuels while maintaining reliable and competitive transportation services. Federal legislation should also promote policy coordination between governments and the private sector.

Although measures for the mitigation of climate change are not directly related to the mandate of the CTA Review, the Statement on Climate Change endorsed by over 2000 Economists, including six Nobel Laureates, gives credence to the feasibility of reducing greenhouse gas emissions without harming living standards. The statement also indicates that the measures may in fact improve economic productivity in the long term.[37]

Recommendation: While recognizing constitutional principles that may arise, the federal and provincial governments need to identify and coordinate their laws and policies to bring greater clarity as to when the modes and their lands are subject to federal or provincial regulation

Several issues have arisen as to when federal law or provincial law apply in relation to regulating environmental issues in the transportation sector.

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[37] "Economists' Statement on Climate Change", *Global Change: Electronic Edition* (February 1997), posted at htpp://www. globalchange.org/econall/97may6g.htm.

For example, a vacuum in environmental law between federal and provincial roles and responsibilities is evident in construction of railway facilities. As indicated in the Canadian Transportation Agency's (CTAgency's) *Annual Report for 1999* at p.47:

> ...it was noted that Agency approval is required only for the construction of railway lines and not for other railway facilities, such as stations, depots, wharfs, warehouses or other buildings. Such facilities are included in the definition of a railway under section 87 of the Act and may therefore be constructed by a railway company pursuant to section 95 of the Act. As no approval is required for such facilities, they do not need to be subjected to an environmental assessment under federal legislation. However, because such facilities are part of a federal railway, their construction would also be exempt from provincial and municipal approval processes. Therefore such facilities may be constructed without any approval process or environmental assessment.... Similarly, railway lines or facilities built "within 100 m of the centre line of an existing railway line for a distance of no more than 3 km" do not require Agency approval. If no Agency approval is required, then no environmental assessment is required under the *Canadian Environmental Assessment Act*. Major facilities such as intermodal yards and transshipment centres can be built within these approval-exempted limits.

Saskatchewan is also concerned about a number of decommissioning and liability issues surrounding the environmental process for railway decommissioning and/or abandonment due to lack of clarity between federal and provincial roles and responsibilities. A major concern in the abandonment process is crystallizing when provincial law applies. The CTA needs to be clarified to indicate when the lands are no longer federally regulated during the abandonment process so that the issue becomes one of land use and provincial regulation. There is no legislative mandate for the Province to require that environmental assessments or audits be conducted during the abandonment process and/or during the sale of federally regulated railway land. Federally regulated railways have made commitments that, where there may be potential environmental concerns or where potential concerns can be demonstrated, they are prepared to conduct environmental audits.[38]

Another concern is the extent to which railways should be required to decommission right-of-ways. Culverts, trestles, rail crossings and rail beds all present long-term liability concerns and responsibility should be clarified legislatively.

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[38] Yard areas, where the density of rail traffic is typically greater, are statistically more likely to experience contamination issues. Under Saskatchewan's *Environmental Management and Protection Act*, the polluter retains liability for contaminated sites forever.

2) The *Canada Transportation Act*'s Performance

a) Section 5 – National Transportation Policy Declaration

Section 5 contains the "National Transportation Policy Declaration" of the CTA. The Declaration is a statement of the CTA's objectives and provides guidance to the CTAgency in its interpretations of the CTA. The Declaration plays an important role in forming transportation policy and jurisprudence in Canada, particularly in relation to air and rail issues.

However, the Declaration provides only a very limited perspective of the larger 'vision' that is needed to coordinate all participants in the Canadian transportation network. Saskatchewan's recommendations for a revised Declaration are based upon Saskatchewan's belief that the principles of competition, co-operation, and commitment are the foundation of effective supply chain relationships which, in turn, are the foundation of an "efficient, effective, flexible and affordable transportation system."

Recommendation: Incorporate a vision statement in the Canada Transportation Act

Saskatchewan concurs with Alberta's Submission to the Review Panel that the CTA requires a vision statement. The lack of a vision statement within the Declaration poses major problems for exercises such as the current Review. Without a shared vision as a starting point, these exercises often look backwards by attempting to assign blame for real or perceived performance failures, rather than looking forward to new possibilities to achieve better value from a shared network. A shared vision is an essential precondition to ongoing intergovernmental, intermodal and inter-firm coordination that is crucial to continually improving Canada's shared transportation network to keep pace with global competitors.

The need for such a national vision in transportation policy and decision making has been clearly and eloquently enunciated by Canada's major trade partner and trade competitor – the U.S.:

> The new forces that globalization has unleashed confront the international community with challenges and opportunities that fundamentally affect the way government, together with its myriad of stakeholders, makes judgments and decisions about the future. For transportation, this new world of change demands a new way of thinking about transportation's place and contribution to the larger purposes it serves. It demands new tools, new alliances, and a new architecture for determining the intricate choices that transportation entails and creates. [39]

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[39] United States, Department of Transportation, *Transportation Decision Making - Policy Architecture For The 21st Century, Draft for Public Comment* (July 28 2000) at p.4. Posted at http://ostpxweb.dot.gov/policy/tpa/PolicyArchCommentDraft.pdf .

Recommendation: The vision statement must clearly continue the primacy of competition; where regulation is necessary to serve the transportation needs of shippers and travelers, the regulations should correct the market to obtain an outcome similar to that achievable under competitive market conditions

A market economy with a high degree of competition will produce lower prices, improve service and encourage innovation and allocation of resources most efficiently within the economy. Saskatchewan supports s.5(b) that states "competition and market forces are, whenever possible, the prime agents in providing viable and effective transportation services." Saskatchewan acknowledges that s.5(b) has been used extensively in Final Offer Arbitration (FOA) cases and this principle must not be lost in the recommended expansion of the Declaration in incorporating a vision statement.[40]

In an ideal world, market forces and competition would be the "prime agents in providing viable and effective transportation services". However, an ideal world does not exist and, in many markets including transportation, an effective competitive market does not exist. In markets where there is no effective competition, Saskatchewan supports the view that government regulation is necessary to prevent firms with market power from abusing this power.

Saskatchewan supports s.5(c) that states the need for regulation "where regulation is necessary to serve the transportation needs of shippers and travelers". However, this subsection could be strengthened by adding, "where regulation is necessary to serve the transportation needs of shippers and travelers, and that such regulation should correct the market to obtain an outcome similar to that achievable under competitive market conditions..."

Recommendation: The vision statement must reflect a goal of the economic health and viability of the entire supply chain, not only transportation service providers

Section 5 currently establishes an objective that "each mode of transportation is economically viable" (s.5(h)) but is only concerned with the economic viability of clients ("traffic") insofar as they are not subject to an "unfair disadvantage" in respect of "fares, rates, and conditions" (s.5(g)(i)).

The CTA's emphasis on the viability of the modes is based on two factors. Firstly, the federal government has historically perceived air and rail infrastructure as serving a national purpose and provided significant financial investments to establish rail and air infrastructure. Secondly, the federal government has historically been very protective of its rail and air sectors, in terms of both ensuring Canadian ownership of and access to infrastructure. This protectiveness is a response to both the competition between the Canadian and American

[40] See FOA #12 filed pursuant to the CTA, *Canadian Transportation Agency Summary* available from the CTAgency as an example of where s.5(b) was relied upon to encourage competition through FOA.

transportation networks and the significant national resolve that was required to meet the challenges that were present in building the Canadian network.

With the exception of VIARail and the federal government's significant hopper car fleet, the federal government no longer is an owner of Crown corporations within the transportation sector and is rapidly removing itself from infrastructure and asset ownership. Although this could be seen as a broader trend by governments,[41] Saskatchewan concurs with comments at p.7 in Alberta's Submission to this Review Panel that:

> transportation carriers, facility providers, freight forwarders, customs brokers, and other components of the "supply chain" are enablers of prosperity, not themselves entities to be preserved at any cost. It is the entire supply chain that is important, not the viability of every entity that makes it up.

It is on this basis that s.5(h) should be clarified to relay the importance of the viability of the sectors and not the individual entities that make up the sector. The primary purpose of the transportation network's existence must be to support economic and social activity that sustains Canada and its high standard of living. Saskatchewan is concerned that the existing policy statement in s.5(h) may be a contributory factor in creating an imbalance between the interests of shippers, passengers and carriers in cases before the CTAgency.

Recommendation: The vision statement must reflect the necessity of integrating modes and jurisdictional responsibilities to benefit clients competing in the global marketplace

Transportation issues can no longer be confined within a single mode or a single jurisdiction. Modes are already inextricably linked in the economic landscape – they often both compete and cooperate. For example, trucks often move traffic to and from the rail system and compete directly with the rail movement. One mode's activities often have significant impacts on other modes. A clear example is the relationship between trucking and rail and the associated impacts on Saskatchewan's roads due to changes in grain rail transportation.

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[41] This is similar to the American challenges in building their transportation infrastructure:

> Because of the high initial investment needed to incubate a mode, each major transportation mode – highways, waterways, rail, transit, and aviation – received support from legislative and executive bodies when its potential public good became apparent. As the mode matured, the public sector modified its support to allow the private sector's pursuit of increasing efficiencies within the modal market. As a result of this legacy and its subsequent adjustments, public sector decision making has traditionally been separated by mode and limited private operations to individual modes. The public sector's evolution from incubator to facilitator has been accompanied by a broadening of decision making process, allowing an increasingly multimodal approach for public and private operators.

Supra, note 39, at p.9.

Transportation modes are becoming increasingly integrated by the rapid expansion of value-adding supply chain relationships. These relationships generally require more transportation services as products are generally no longer assembled at one factory but are transported for processing steps between multiple businesses at many locations. This increasing volume of transportation is also occurring within, and adding to, the demand for dramatically increased transportation speed to meet demands for reduced inventory and just-in-time delivery. These new supply chain relationships often involve increased movements between both international and intranational jurisdictions.

The U.S. has also recognized that fundamental changes require new levels of intermodal and interjurisdictional cooperation. These fundamental changes have occurred as a result of the overall maturity of the transportation network and the rapidly increasing complexity and inter-relationships in the network.

> The process for making decisions become increasingly important as the transportation enterprise becomes more complex. Because the transportation enterprise is composed of multiple organizations with multiple goals, no single organization has direct responsibility for the whole or even a majority of the enterprise. This means that strong, effective leadership is necessary at all levels of the transportation enterprise: from federal, state, and local government, from industry partners, transportation operators, and end-users.[42]

Both the maturity of existing modes and the changing supply chain structure of the economy have led to a dramatic increase in the need for "seamlessness" amongst all parts of the transportation system. With a coherent and compelling vision that can lead coordination of modes, Canada has opportunities to create a transportation network that will provide competitive advantages for Canadian industry, shippers, carriers and consumers.

Recommendation: The vision statement must acknowledge that roads play an integral role in trade corridors nationally and internationally. To enable this vision, the federal government must commit to meaningful funding of trade corridor infrastructure

Identification and facilitation of "trade corridors" are considered the most effective ways to target resources towards current and future transportation needs. Such corridors must allow seamless connections among north-south and east-west destinations.

The federal government presently does not regulate roads/highways nor does it directly fund road infrastructure, except in national parks. As highways play an integral role in trade corridors nationally and internationally, Saskatchewan recommends that the CTA be amended to incorporate them as part of the national transportation vision and of sufficient national interest to merit meaningful federal infrastructure funding. The NTIS should form the basis of meaningful and long-term federal investment in road infrastructure.

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[42] *Ibid*, at p.22.

b) Rail Sector

Saskatchewan's Submission dated October 20, 2000 to the CTA Review Panel focussed on competitive rail issues and, although not repeated in this Submission, Saskatchewan maintains these recommendations. Rather, the focus of this portion of the Submission will focus on other rail issues that concern Saskatchewan, notably issues regarding branchline/shortline and rail mergers. Saskatchewan's recommendations on the revenue cap have been forwarded directly to the CTAgency. The recommendations outline Saskatchewan's concerns and requests for safeguards to ensure that Parliament's intention in Bill C-34 is accomplished.

i) Branchline Issues

Recommendation: Define "railway line" as including a yard track, siding, spur, or other track auxiliary to a railway line

Pursuant to sections 113 to 116 inclusive of the CTA, federal railway companies have a statutory obligation to provide suitable and adequate facilities and service. Through Bill C-34 amendments, the CTAgency has received additional powers governing grain-dependent branchlines. Where suitable and adequate service is not being provided on a grain-dependent branchline, the CTAgency is empowered to authorize another railway company to run and operate its trains on that branchline or to order that the owning railway company indicate in its three-year plan that it intends to discontinue the line. Pursuant to the recently amended s.142 of the CTA, any government or community-based group endorsed by a government is entitled to immediately commence negotiations for the acquisition of that line.

Since s.142 came into effect, neither CN nor CP has rail lines in Saskatchewan in the discontinued category.[43] However, a number of these railway lines have not been serviced for a significant time yet they are back on the railways' "retained" category. In fact, on many of these lines, grain elevators are now being dismantled or demolished. The railways are segmenting to the lowest level possible and have removed the sidings or elevator tracks. On these "demarketed" lines or non-serviced lines, it is expected that the railways will, in fact, "skeletonize" their assets to the extent that all that will remain is the main track. In this event, the likelihood of anyone being interested in utilizing the former trackage for loading cars is remote.

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[43] As of July 13, 2000, the subdivisions of Elrose (18.6 miles), Mantario (43.8 miles) and White Bear (24.5 miles) that had formerly been slated for discontinuance on CN's 3-year plan were shown for retention. CP did not make any changes to its 3-year plan for discontinuance. It had the Notukeu Subdivision listed for discontinuance, which was purchased by Westcan in August 2000.

The CTA does not clearly provide for the transfer or retention of yard tracks, sidings, elevator tracks and ancillary trackage required for the continuation of effective railway operations. Section 140 of the CTA should be amended as follows:

> 140(1) In this Division, "railway line" includes a portion of a railway line including:
>
> (a) a yard track, siding or spur; or
>
> (b) other track auxiliary to a railway line.
>
> (2) The Agency may determine as a question of fact what constitutes a yard track, siding, spur, or other track auxiliary to a railway line.

Recommendation: Update Schedule I of the Canada Transportation Act

Schedule I of the CTA needs to be reviewed and updated to include branchlines whose status has changed to grain-dependent since revisions were implemented on August 1, 2000. Updating the Schedule would permit communities located in the vicinity of these branchlines to be eligible for compensation from federally regulated railways if these lines are discontinued.

Recommendation: All railway assets should be subject to transfer when the purchaser indicates they are required for continued railway operations

The CTAgency's decisions have required railway companies transferring lines to another company to convey trackage including yard tracks, sidings, spurs or other tracks auxiliary to a railway line when they are required for continued railway operations. In certain instances, the CTAgency exercises discretion as to what assets should be included in the transfer. To avoid the time and expense of an application to the CTAgency and the uncertainty which arises from this process, it is essential that s.140 of the CTA be amended to explicitly provide that all railway assets including yard tracks, sidings, elevator tracks and required ancillary tracks be the subject of a transfer whenever the purchaser indicates they are required for continued railway operations.

Recommendation: Upon designating a railway line as a line to be discontinued, the line shall be listed for discontinuance for at least 12 months and a transfer process may be initiated on any line listed for discontinuance at any time during this period at the initiative of any person interested in acquiring the line for continued railway operations

Section 141(1) of the CTA requires federally regulated railways to prepare and keep an up to date plan on each of their railway lines and whether the operation of the line will continue, be discontinued or transferred within three years. Railways are at liberty to change the category of branchlines at will which creates uncertainty whether lines will remain on the continued, discontinued or to be transferred list. This uncertainty, coupled with the practice of demarketing of services on many lines, discourages long term investment by shippers, communities and road authorities.

Saskatchewan recommends that railways be required to designate a core system that will have guaranteed operations and services for at least twelve calendar months. Undesignated rail lines would be automatically placed on a pending discontinuation list to provide an opportunity for interested parties to purchase them. This recommendation provides opportunities for shortline railways to put together a network of branchlines that are economically feasible and that constitute a regional collection system that is more of a provincial interest than a national or international interest.

Recommendation: Permit greater flexibility for participation by interested persons in the sale/transfer of rail lines

Section 144 of the CTA describes the process required to transfer a rail line. This section requires parties to conclude negotiations on the sale or transfer of the line within 6 months. If negotiations are not concluded within 6 months, railways are obligated to either continue service on the rail line or to offer the rail line to governments by giving notice under s.145.

The combination of time periods between sections 144 to 145 presently cause uncertainty to railways, the interested persons and governments as to who has priority during the negotiations.

Saskatchewan recommends that s.144(4) be amended to permit the railway and the interested person to agree to extend the 6 month time period. In addition, s.144 should be clarified by adding a new subsection that the railway company shall not commence proceedings under s.145 while negotiations are continuing under s.144.

Recommendation: Grant the Canadian Transportation Agency jurisdiction to review Class I railways' proposals to transfer lines to ensure that the proposed transfer promotes the continuation of railway service in a manner consistent with the intent of the Canada Transportation Act

Although CP Railway's submission recommends repealing s.146.1 due to concern that it compromises shareholders' interests by contingent liability,[44] Saskatchewan recommends that s.146.1 must be maintained because of the significant economic, social, and transportation implications that are incurred by the Province and, in particular, the communities as a result of the loss of rail service.

There is concern that Class I railways may enter into transactions for the transfer of railway lines which are structured to ensure that continued railway operations on those lines will terminate or be of a short-term duration. This result could be achieved through short-term lease arrangements or through a conveyance to a purchaser that is controlled by the Class I railway. Such transactions are inconsistent with the intent of the CTA to promote shortline railway development. They also would permit the Class I railway to circumvent its payment obligations to communities pursuant to s.146.1.

Saskatchewan supports the amendments made to s.144(6) of the CTA through Bill C-34. However, additional amendments are needed to permit the CTAgency, upon application of an interested person, to review the offer of the Class I railway to determine whether it will promote the continuation of railway service. The CTAgency's jurisdiction would apply to a proposal by the Class I railway and the CTAgency should have discretion to approve the offer, order that it be amended or that it be withdrawn.

In addition to maintaining s.146.1 as well as s.144(6), Saskatchewan recommends an additional section be inserted into s.144 as follows:

> If, on complaint in writing by an interested person that an offer of a railway company to transfer a railway line whether by sale, lease, or other conveyance, is unlikely to promote continued railway operations, the Agency shall conduct such investigation as the circumstances warrant and may order that the offer proceed, that it be amended or that it be withdrawn by the railway company.

Recommendation: Extend the remedy of bad faith operations by a railway company so that it is available to governments

Subsection 144(6) of the CTA applies to remedies available to non-governmental third parties where a federally-regulated railway company is not negotiating in good faith in a sale, lease or other transfer of the railway line or its operating interest in the line. No similar remedy is available to governments pursuant to s. 145.

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[44] Canadian Pacific Railway, *Canada's Railways: Achieving Potential: A General Brief to the Canada Transportation Act Review Panel* (December 2000) at p.7 and 45.

Saskatchewan recommends that the remedies available in s.144(6) should be extended to municipal and provincial governments. In particular, municipal governments should be able to access the CTAgency for a determination of revenue division when a municipal government acquires a rail line.

ii) Follow-up to Bill C-34

Recommendation: Include incentives, rebates or any similar reductions paid or allowed by the railway company as part of the revenue cap

Currently, Class I railways provide incentive rates to grain elevators which can load rail cars in car blocks of 25, 50 and 100 or more cars in specific time periods. These incentives are offered because the railways can reduce their costs and increase efficiencies by decreasing the amount of switching and other operations associated with single and small car spots. These incentive rates are not included in the revenue cap with the result that the single car rates are established without accounting for the inclusion of multiple car discounts.

Saskatchewan recommends that s.150(3)(a) of the CTA be repealed. Incentives, rebates or any similar reductions paid or allowed by the railway company should be included in the revenue cap so that single-car rates and disparities between single-car and multiple-car rates may be reduced.

Recommendation: Remove discrimination between incentive rates at an elevator and interchange with a provincial railway

The interchange of cars (for example, 100 cars) between a shortline and the mainline connector at an interchange point for both delivery and receiving of cars is very similar to that of a Class I railway delivering and picking up 100 cars at an elevator point.

Despite the similarity in cost savings between a large car spot at an elevator and a shortline/main line interchange point, the Class I carrier does not generally offer incentive rates when a shortline delivers a large block of cars to an interchange point. This behaviour may constitute price discrimination against shortlines and adversely impacts the ability of shortlines to compete with grain elevators at the main line of the Class I carrier.[45]

[45] Saskatchewan shortlines are subject to competition by large inland grain terminals who offer trucking premiums to farmers so that it is more cost-effective for farmers to transport the grain a longer distance to the large inland terminal instead of to the nearest elevator or producer loading site. If the shortline operator was able to access the same incentive rates as the large grain terminal, the shortline operator could pass the savings onto the farmers.

iii) General Issues

Recommendation: While recognizing constitutional principles that may arise, the federal and provincial governments need to identify and coordinate their laws and policies to bring greater clarity as to when railways and their lands are subject to federal or provincial regulation

Saskatchewan needs an expeditious resolution of federal/provincial roles and responsibilities within the rail sector given the present escalation of elevator consolidation, and rail rationalization and abandonment. Sections of the CTA defining rail infrastructure are vague. It is unclear whether rail sidings fall within federal or provincial authority. It is unclear whether abandoned rail lines fall under federal or provincial authority, depending on how the owner of the rail lines uses the abandoned rail lines. For example, there are a number of situations in Saskatchewan where the railways have carried through on the discontinuance process, advised the CTAgency of the date of discontinuance of operations but have retained their track structure and right of ways intact. Occasionally these tracks are used for storage of empty cars at different periods of the year, which invokes the Class I railway's argument that the abandoned track is subject to federal regulatory authority as it is using the abandoned track as an integral part of its rail operations.

Although Saskatchewan has regulatory authority over the land on which former federal branchlines' service was conducted, it is extremely difficult to develop policy when a major portion of the transportation collection system is beyond the Province's or local government's control.

Should rail infrastructure (including rail sidings, tracks, ties, etc) be removed, it is doubtful that rail infrastructure will be reconstructed because of the significant cost of constructing rail lines. Once rail infrastructure is removed, opportunities to stimulate competition in the rail sector by shortline railways or by the initiatives of producer groups will be eliminated.

Recommendation: Permit the Canadian Transportation Agency to hold joint hearings with a provincial board to resolve connection issues and other matters affecting the relationship between federal-provincial railways

Section 151 of the NTA, 1987 allowed a "provincial board" and the National Transportation Agency to participate in joint hearings to order connections between intersecting federal and provincial railways. This provision was removed from the CTA.

As provincially-regulated railways are increasing in number, it would be appropriate to re-insert this section in the revised CTA to ensure that a mechanism is in place to deal with interjurisdictional issues involving connections, interchanges, and interswitching rates.[46]

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[46] It is notable that Manitoba's *Highway Traffic Act* and *Railway Act* permit joint hearings. Saskatchewan is considering amending its *Railway Act* to authorize joint hearings.

Recommendation: Both the Competition Bureau and the Canadian Transportation Agency should be responsible for rail merger issues and the Canadian Transportation Agency should ensure that proposed mergers meet a "public interest" test

Saskatchewan is concerned that the CTAgency did not have the authority to review the announced merger of CN and Burlington Northern Santa Fe (BNSF). The Canadian Government left the perception that the U.S. Surface Transportation Board (STB) was to review and determine the outcome on the merger application. Canadian interests were excluded from this process which begs the question of whether the federal government has control over Canadian rail transportation policy. The defunct merger between CN and BNSF, announced in December of 1999, will likely be followed by other merger announcements amongst major North American railways.

The proposed merger of CN-BNSF sounded alarm bells amongst shippers, governments, regulators and other major railways in North America about the future number of major Class I railways that would be left in North America. There was a general agreement among those in the industry that a merger between CN and BNSF would set off the last wave of mergers that would eventually leave North America with two major Class I railways. The U.S. STB stated:

> But regardless of the merits of the BNSF/CN proposal standing alone, many parties expressed concern that, if the BNSF/CN proceeding goes forward, that proposal will not go forward alone. Indeed, the Class I railroads have clearly stated that they would find it necessary to respond in kind, and there is a substantial possibility that, absent decisive action on our part, in the very near future, we will likely be left with the prospect of only two large railroads serving North America. We at the Board, like members of the shipping public, are seriously concerned about the competitive consequences of this level of industry restructuring.[47]

Since the introduction of the *Staggers Rail Act of 1980* that significantly deregulated the railroad industry, the U.S. rail sector has experienced many mergers. There have been numerous discussions of the benefits to the rail sector and problems for shippers, especially those who are captive. The continuing consolidation of the rail sector in North America has raised fears amongst shippers about the level of competition that will be left once the mergers are complete. The U.S. STB has identified the potential problems with new mergers among Class I railroads and the instability in the rail sector.

Saskatchewan shippers and the government of Saskatchewan have real concerns about future mergers and their impact on rail competition. For example, the proposed merger between CN and BNSF would have eliminated the option available to Saskatchewan shippers of linking to

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[47] United States of America, Surface Transportation Board, *Docket no. EP 582 0, Public Views on Major Rail Consolidations and Major Rail Consolidation Procedures* (January – November 2000), Background section, posted at:
http://www.stb.dot.gov/decisions/ReadingRoom.nsf/83fd59cf17adc80785256559007ba132/91bfb3efdcfb498b852568a40058852e?OpenDocument

the BNSF as a competitive rail alternative. Saskatchewan is also concerned that proposed combinations be assessed in a manner that considers the regional interest as well as the national interest.

Saskatchewan recommends that regulatory authority over rail mergers be clearly defined and that a process be established that includes a public hearing where provincial governments and stakeholders would be heard to ensure mergers are in the "public interest". The following criteria should be used to evaluate any merger proposals:

- The merging railways should be required to demonstrate to the CTAgency that the merger is in the "public interest". The merging companies should be required to prove to the CTAgency that their union would provide greater logistical and economic efficiency and that competition will be enhanced. Merger policy should also include the effects on competition, impacts on service, and downstream effects of the mergers – both in other markets and for the future structure of the industry;

- The Competition Bureau should be responsible for reviewing any merger proposals from a competition perspective; and

- For international mergers, there should be a full exchange of information and uninterrupted co-operation between Canadian and U.S. (and potentially Mexican) government regulators in approving and attaching any conditions to proposed mergers.

Recommendation: Rail bankruptcy provisions need to be reviewed for relevance

Sections 106 to 110 of the CTA relate to rail bankruptcy. It seems peculiar that the CTA would have rail bankruptcy provisions but does not regulate air bankruptcy provisions. In addition, the bankruptcy provisions are scant. Both rail and air transportation providers are privately owned companies and, if compared by that criteria, should be subject to the same bankruptcy provisions. It is recommended that Transport Canada review the relevance of these provisions and determine whether it remains appropriate or relevant that the rail sector be dealt with differently than other transportation modes.

Recommendation: The "public interest" test should be reintroduced to assist captive rail shippers

The NTA, 1987 contained provisions in sections 58 to 63 permitting any person or organization to request that the Agency investigate the rate, act or omission by a carrier. If the Agency determined that a rate, act or omission made by the carrier was prejudicial to the public interest, the Agency had the discretion to require the carrier to remove the prejudicial feature in the relevant rates or conditions specified in the carriage of goods or make such order as deemed appropriate by the Agency.

It is notable that section 66 of the CTA grants the CTAgency discretion to review unreasonable fares or rates to captive air stakeholders, which is very similar to the previous "public interest" test.

Saskatchewan recommends that it would be appropriate to reintroduce a "public interest" component for rail shippers that is currently available to air stakeholders. This recommendation assists in creating consistent treatment of shippers between the modes.

c) Other General Provisions in the *Canada Transportation Act*

Recommendation: Enforcement provisions should be reviewed

Considering the rapid changes that are occurring in the transportation sector, and, in particular, the emergence of dominant carriers in both the air and rail sectors as a result of mergers, the enforcement provisions of the CTA should be carefully reviewed to ensure that the CTAgency is not unduly restricted.

Section 176 of the CTA imposes a 12-month limitation period after which no proceedings may be instituted under the CTA. The concern arises that there may be occasions where an offence is not evident until a later date, particularly where anti-competitive behaviour is involved, and the 12-month limitation period may be too restrictive.

Similarly, s. 181 of the CTA should be reviewed to ensure that the penalties are appropriate for offences that occur under the CTA.[48]

d) Performance Measures to be incorporated in the *Canada Transportation Act*

To assist in future reviews of the CTA, it is necessary to equip the Panel, Transport Canada and stakeholders with data and information to assist in evaluating its performance. The performance of the CTA can only be evaluated in the context of the performance of the entire Canadian transportation network.

As described above, Saskatchewan strongly supports incorporation of a vision statement within the s.5 Declaration. Including a vision statement in the CTA will assist in future evaluations of its performance.

The key point for effective performance measures is that they must lead to effective actual performance amongst all parts of the transportation network. To do so, they must be focussed upon outcomes instead of processes.[49] The intergovernmental, intermodal and inter-

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[48] The *Competition Act's* limitation periods and penalties are greater than under the CTA. Pursuant to s.45 of the *Competition Act*, the penalty for conspiracy to interfere with competition is an indictable offence with potential penalties being a term of imprisonment not exceeding five years or a fine not exceeding $10 million or to both. In s.79(6), the limitation period for anti-competitive acts is 3 years and the Tribunal has a broader range of powers as described in s.79.

[49] See M. Patton, *Utilization-Focused Evaluation, 3rd Ed.* (London: Sage Publications, 1997) at p.157 for an interesting discussion of the problem of performance measures focusing on process rather than outcomes and

firm coordination required to achieve desired outcomes in the transportation sector can only be accomplished through a clearly described and shared vision of what those outcomes will be.

i) Tools Necessary for the Next *Canada Transportation Act* Performance Review

Recommendation: Require aviation and rail entities to provide comprehensive data as a means of monitoring consumer protection and competition issues

Although several competitors intend or are expanding to compete with Air Canada on major routes, their success will depend upon the suitability of their business strategies and Air Canada's reaction to competition. Given the complexity of airline pricing structures, it is difficult to determine whether Air Canada, as the dominant carrier, is employing anti-competitive behaviour and tactics. There is concern that Transport Canada lacks adequate passenger, cargo and air-facility data to assist in the assessment of anti-competitive behaviour.

Similarly, as regional and shortline competitors are attempting to compete with Class I rail carriers, their success will depend upon the suitability of their business strategies and the Class I carrier's reaction to competition. Given the complexity of the rail sector, it is difficult to determine whether Class I carriers are employing anti-competitive behaviour and tactics. There is concern that Transport Canada lacks adequate data to assist in the assessment of anti-competitive behaviour.

Saskatchewan recommends that the CTA be amended to require air and rail entities to provide comprehensive data equivalent to that collected in the U.S. to assist in monitoring consumer protection and competition issues.

Saskatchewan also recommends that the data pertaining to the air sector should be used in the Air Travel Complaints Commissioner's annual report to monitor consumer protection and competition issues. The Commissioner should be able to monitor and report on trends such as:

- the percentage of domestic revenues by carrier,
- the percentage of domestic passengers by carrier, and
- the various classes of fares such as business class, economy class and discount fares for a selected sample of city pairs.

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characterized as "leading a horse to water versus getting it to drink… Most reporting systems focus on how many horses get led to the water, and how difficult it was to get them there, but never quite get around to finding out whether the horses drank the water and stayed healthy".

Saskatchewan recommends that the data pertaining to the rail sector should be used in Transport Canada's annual report to monitor rail competition issues. Transport Canada should be able to monitor and report on trends including:

- the percentage of revenues by carrier,
- the percentage of commodity by carrier, and
- the various classes of rates such as premium, common class and incentive rates for a selected sample of points.

Recommendation: ***Transport Canada should conduct a comprehensive study on the state of intermodal movements in Canada with the study to concentrate on transfer points between the various transportation modes***

As a means of determining whether the transportation network is working effectively, we must know how efficiently it operates in transferring goods between modes, such as truck to/from rail, truck to/from ship, truck to/from airplane and rail to/from ship. There are potential bottlenecks at transfer points between modes that are increasing costs and the time needed to deliver goods up the marketing chain. The U.S. has recognized that severe bottlenecks at intermodal facilities are increasing costs to the American economy and, therefore, has recently committed significant funds to improve the infrastructure at intermodal facilities through TEA-21.

It would be appropriate for this comprehensive study to be completed in advance of the next mandatory review of the CTA. The study should be available to the next Review Panel and its stakeholders to assist in evaluating the CTA's performance.

Recommendation: ***Transport Canada should conduct a comprehensive study to determine how funding responsibilities for transportation infrastructure has affected and is being impacted upon by the economics of transporting goods across different transportation modes***

In Canada, the majority of road infrastructure is publicly funded. In contrast, rail infrastructure is predominantly funded by private capital. Many transportation analysts are of the belief that the public funding of the road infrastructure is a subsidy to the trucking industry because fees and fuel taxes collected by governments from the trucking industry do not cover the costs of providing this infrastructure. Since the trucking industry does not pay the full cost for infrastructure, they are able to charge lower prices to shippers than if they had to pay for the full infrastructure cost.

There is an argument that the ability to charge lower rates to shippers has allowed the trucking industry to undercut freight rates charged by the railways. These analysts believe that the large shift in the movement of goods from rail to road over the last fifty years is partly due to the subsidization of the trucking industry. As with any form of subsidization, it is argued that roads are overused as the trucking sector is subsidized while rail is under-utilized because it is not publicly subsidized.

Transport Canada should conduct a comprehensive study to be completed in advance of the next mandatory review of the CTA to determine how funding responsibilities for transportation infrastructure has affected the economics of transporting goods across different transportation modes.

Recommendation: Transport Canada should undertake annual sample surveys of air travelers to assess satisfaction with domestic carrier services

Under previous transportation legislation, annual surveys were conducted by the National Transportation Agency to ascertain customer satisfaction. This requirement was removed from transportation legislation. It is important that the surveys be re-instituted to evaluate customer satisfaction in both regional and national carrier services.

ii) Other Recommendations Relating To The *Canada Transportation Act*'s Performance Review

Recommendation: Require the Minister of Transport to carry out an independent review of the operation of a restricted airline industry no later than January 2003, and that this review be undertaken in addition to the annual reviews conducted by the Air Travel Complaints Commissioner and by the Independent Transition Observer on airline restructuring

The federal Minister of Transport sponsored several amendments to Part 2, Air Transportation in the CTA to protect consumers and communities, which came into effect on July 5, 2000. The *Competition Act* has also been amended to give new powers to the Competition Bureau to regulate anti-competitive behaviour including the issuance of temporary orders to stop predatory behaviour. The Commissioner of Competition has recently exercised this power to issue a cease and desist order against Air Canada on some routes that it serves with CanJet.[50] In addition, Air Canada is challenging the constitutionality of the cease and desist order as it only applies to the airline industry and not to other modes. This challenge has been brought to the Quebec Superior Court and was scheduled to be heard in February 2001.[51]

Saskatchewan welcomes these recent amendments to the CTA. Although it is too early to say how successful they will be in fostering air competition, it is necessary for both the

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[50] Industry Canada News Release, *Commissioner of Competition issues temporary cease and desist order against Transport Canada* (Ottawa, October 12, 2000).

[51] Letter from Kenneth C. Roe, CEO, IMP Group to the Manitoba Minister of Justice and Attorney General (October 20, 2000).

Competition Bureau and the CTA to report on the competitive impacts in their respective spheres.

Nonetheless, it is essential for the Minster of Transport to undertake an independent review of the operation of the airline industry in the context of Air Canada's dominance to be completed no later than January 2003. This review should be undertaken in addition to the annual reviews conducted by the Air Travel Complaints Commissioner and the Independent Transition Observer. The rationale for the review by January 2003 is to enable the Minister to determine whether the recent amendments in Bill C-26 to encourage consumer protection and competition in the air industry are working.

iii) Criteria To Measure The *Canada Transportation Act*'s Performance

Recommendation: Measure the competitiveness and efficiency of each mode of transportation on a continuous basis

Transportation is a very important component in supporting all economic and social activities across Canada. In order to measure and assess the CTA's performance, Saskatchewan suggests the following key indicators:

- Transportation's contribution to the Gross Domestic Product (GDP) as a proportional measurement compared to other sectors. An important trend to measure is the relative change in transportation's contribution to the GDP as a proportion of the total contribution;

- Gross investment by private and public funding in infrastructure. This measure indicates the need to meet new and existing economic and social trends;

- Gross expenditures on transportation activities as a measure of transportation consumption including employment and productivity growth. (This could include measuring output per employee and the total number of employees in the transportation work force);

- Price of transportation services relative to the general level of the prices of outputs; and

- Growth in value-added output, particularly in primary industries that process and ship products domestically to other regions and for export.

3) Review of Other Federal Transportation Legislation

a) Rail Sector

Saskatchewan continues to support the existing federal *Railway Relocation and Crossing Act*. It is important that this Act remain in place to continue to permit municipalities to plan for and not around railways. Another fundamental principle of this Act is that the railways remain in a "no loss no gain position" as a result of municipal planning. This principle and its application may be pertinent where preservation of urban rail corridors is an issue.

Recommendation: Federal funding should be increased to meet upcoming road/rail grade crossing safety regulations

Since the introduction of the *Rail Safety Act* (RSA) on January 1, 1989, regulatory approval of the construction or reconstruction of grade crossings on federally regulated railways is not required. Instead, the RSA allows for regulations to be established to set standards for grade crossings and monitoring as to whether they can be achieved. Draft regulations have been formulated respecting the construction, inspection, testing and maintenance of grade crossings and their approaches and the use of the land adjoining the crossing insofar as they may affect safety.

There appears to be overall consensus between road and rail authorities, Transport Canada and the Provinces that new regulations regarding road/rail-crossing safety are required. Transport Canada introduced a national rail safety program, Direction 2006, that provides 80% of the cost of improvements required on federally regulated grade crossings.

In the meanwhile, the federally regulated railways have transferred their less profitable rail lines to provincially regulated railways and this process has been facilitated through the CTA. Provincially regulated railways are not eligible for funding under Direction 2006.

The primary concerns with the proposed federal regulations are that additional costs are involved to implement the regulations and that the current Direction 2006 is not adequately funded. The concerns are as follows:

- The regulations will require qualified safety inspectors to review all grade crossings every five years. Saskatchewan is concerned that the ongoing costs of safety audits will have to be absorbed by the Province, municipalities and road authorities. Safety audits should be defined and funded by Transport Canada to ensure that the same standards are applied to each grade crossing safety audit or safety review;[52]

- Federally regulated railways are eligible to participate in Direction 2006 but the additional costs to implement the federal regulations exceed the funding available in the

[52] Saskatchewan is also concerned that there are insufficient qualified persons to perform safety audits of Saskatchewan's 6 437 grade crossings (1290 per year or 108 per month). Qualified persons performing safety audits and safety reviews should be certified by Transport Canada.

program;

- The Provinces will feel obliged to implement regulations similar to the federal regulations upon provincially regulated railways for uniformity purposes. As a result, the Provinces anticipate pressure from municipalities, road and rail authorities to provide similar funding for the improvements to meet safety standards;[53] and

- "Responsible authorities" should be expanded to include Transport Canada in addition to federally regulated railways and road authorities on federally-regulated grade crossings.

Federal programs need expansion to assist both federally and provincially regulated railways in funding the improvements and safety audits required to meet safety standards.

b) Trucking Sector

Recommendation: Federal legislation should ensure that Transport Canada continues to work with the Provinces and Territories to implement consistent trucking standards to be applied uniformly across the country as a means of facilitating safe and efficient movement of goods and services

Trucking is a necessary mode of transportation in Saskatchewan. For most of the province, trucking is the only means available for delivering goods and services to support local communities, businesses and industries. As branchlines are abandoned and the grain delivery system is consolidated, trucking is becoming the economic lifeline for rural Saskatchewan.

Within the context of the North American Free Trade Agreement (NAFTA), the federal government is expected to take a lead role in discussions and negotiations with the U.S. and Mexico. However, in many areas, Transport Canada cannot make commitments without the support of the Provinces and Territories. The current legislative framework does not allow Transport Canada to impose its leadership. Leadership must be obtained through garnering support of the Provinces and Territories. Saskatchewan supports this framework but feels that Transport Canada should have the means available to assume a leadership role. This leadership should not be legislated, but should be cooperatively established through participation in and support of initiatives having national implications as well as regional initiatives that support broader national concerns.

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[53] According to Transport Canada's *Transportation in Canada 1999, Annual Report* at p.19, there are 22 424 public grade crossings on federally regulated railways in Canada. Saskatchewan has 6,437 (or 29%) of the federally regulated grade crossings in Canada. Virtually all grade crossings in Saskatchewan need some form of improvement to meet the proposed grade crossing regulations. The Province, the road authorities and the municipalities will have problems funding the improvements for both federally and provincially regulated road/railway crossings.

The federal government's *Motor Vehicle Transport Act* (MVTA) addresses interprovincial and international truck movements. Although the MVTA is restricted to cross-border movements, its practical applications should affect all trucks. The MVTA should require that Transport Canada work closely with the Provinces and Territories to establish standards that are acceptable and uniform for interprovincial as well as intraprovincial trucking.

c) Bus Industry

The bus industry is subject to a separate review under the House Standing Committee on Transportation. As a result, Saskatchewan will briefly outline its position on the proposed amendments to the MVTA that were introduced into the House of Commons on March 25, 1999 under Bill C-77. This Bill would have removed the economic regulation on interprovincial bus undertakings and their intraprovincial operations through a staged approach.

Saskatchewan supports deregulation of charter bus service, bus parcel express and streamlining the rules for scheduled inter-city service that would significantly liberalize the industry and promote competition and innovation in the provision of bus service. Saskatchewan is opposed to the deregulation of interprovincial and intraprovincial scheduled bus service and supports the current regulatory regime of public convenience and necessity (PCN) for scheduled passenger service.

Saskatchewan's opposition is based on the dispersion of communities in rural Saskatchewan and the transportation choices available to residents of these communities. Saskatchewan's position is supported by a KPMG study that categorizes 61% of scheduled bus passengers as economically disadvantaged.[54] Saskatchewan is concerned that rural residents and the economically disadvantaged need access to transportation at a reasonable cost.

Saskatchewan is presently being serviced by two major carriers who use the more profitable routes to cross-subsidize routes that are not profitable. If competition erodes profits on the more lucrative routes available in Saskatchewan, the existing carriers are not expected to be able to provide affordable service to rural residents and the economically disadvantaged.

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[54] Canadian Bus Association, *Impact of the Deregulation of Scheduled Intercity Bus Service*, prepared by KPMG (December 29, 1998). This study defined the "economically disadvantaged" as including senior citizens, students, unemployed or otherwise having a household income below the poverty line.

4) Federal Policy

Saskatchewan has a few rail and air transportation concerns that are related more to policy issues than legislative provisions in the CTA.

a) Rail Sector

Recommendation: ***As a condition of entry into agreements transferring federally owned rail cars to third parties, the federal government should incorporate conditions within the agreements that ensure a reliable supply of railcars and access to western Canadian rail users***

The federal government gave notice in December, 1996 that it was terminating the agreement between the railways and the federal government that gives railways the right of first refusal on the sale of the federal hopper car fleet effective June 30, 2002.

Saskatchewan continues to support the principles recommended in a joint submission from the Provinces of Manitoba, Saskatchewan, Alberta, and British Columbia to the Federal Grain Review in September 1998, notably:

- Ensure a reliable supply of rail cars for the movement of western Canadian farm products; and
- Ensure reasonable access by all producers to the rail transportation system.

b) Air Sector

Recommendation: ***The federal government should begin negotiations as soon as possible with the United States for the implementation of the modified sixth freedom rights between the two countries to allow the sale, marketing or display of sixth freedom traffic on a single ticket basis. Furthermore, given the dominant carrier situation in Canada, the federal government should negotiate modified sixth freedom on a non-reciprocal basis, if necessary***

A sixth freedom is the right to carry traffic from one foreign country to another foreign country via the carrier's home country. For example, a carrier like Northwest Airlines can take a passenger from Regina or Saskatoon to Toronto through Minneapolis, where the passenger then goes through U.S. Customs before proceeding to Toronto. While Northwest can do this at the present time, it cannot sell this service, market it, or display it on a travel agent's computer reservation system on a single ticket basis. A modified sixth freedom would allow people who use this service to purchase one ticket and would facilitate increased competition among the airlines into the Toronto market.

Northwest Airlines currently serves Regina and Saskatoon with two daily flights from its Minneapolis hub. It provides Saskatchewan residents with access to U.S. destinations as well as international destinations through Minneapolis. It also provides indirect access to Toronto

through Minneapolis through three daily flights, but this requires travelers to purchase two tickets, e.g., Regina-Minneapolis, and Minneapolis-Toronto. Saskatchewan's airport authorities advise that many residents are utilizing this service.

Saskatchewan supports the recommendations from the Report of the Standing Committee on Transport (SCOT) as one means to enhance domestic competition. Saskatchewan recommends that the federal government begin negotiations as soon as possible with the U.S. for the implementation of the modified sixth freedom rights between the two countries to allow the sale, marketing or display of sixth freedom traffic on a single ticket basis. Furthermore, given the dominant carrier situation in Canada, the federal government should negotiate modified sixth freedom on a non-reciprocal basis, if necessary.

Recommendation: ***The federal government should undertake a feasibility study to determine the potential impacts of the relaxation of cabotage rules in consultation with major stakeholders, including the Provinces as its constitutional partners. Furthermore, the federal government should consult these major stakeholders before concluding any cabotage agreement with the United States***

Saskatchewan recommends that the federal government undertake a feasibility study in consultation with major air stakeholders, the Provinces and the Territories to determine the potential impacts of the relaxation of cabotage rules. The request for a feasibility study rests on the concern that the impacts of relaxing the rules are unknown on domestic carriers and on the Provinces and Territories.

Once the feasibility study is concluded, it should be released to the major stakeholders. Should the federal government determine it appropriate to proceed with negotiations with the U.S. on reciprocal cabotage, Saskatchewan recommends that the federal government consult with major stakeholders, the Provinces and the Territories before entering into negotiations and concluding any agreement with the U.S. The Provinces have previously requested greater involvement in air bilateral issues. This issue has become more urgent in recent years with the devolution of airports and the establishment of airport authorities that want to improve international service in their regions.

Lastly, Saskatchewan supports the SCOT recommendation that:

> no agreement should be concluded without a comprehensive review of the outcome of the negotiations by the Canadian Transportation Agency, the Competition Bureau and the appropriate committees of Parliament.[55]

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[55] Canada, Standing Committee on Transport, *Restructuring Canada's Airline Industry: Fostering Competition and the Public Interest* (Ottawa, December 1999), Recommendation 15.

Recommendation: Transport Canada should examine the feasibility of extending the "Open Skies Agreement" to air courier and air cargo movement with no co-terminalization restrictions

In February 1995, Canada and the U.S. signed the "Open Skies" Agreement. This Agreement gave Canadian carriers the right to establish routes for passenger transborder traffic from any point in Canada to any point in the U.S. and gave American carriers the right to do the same in Canada, with some restrictions for the first three years. These restrictions expired as of February 24, 1998.[56]

This Agreement does not apply to air-cargo carriers where co-terminalization restrictions apply. Presently, an air cargo carrier with take-off weight greater than 35 000 pounds cannot fly from an U.S. point to Winnipeg to deliver cargo originating from the U.S. and then proceed to Regina to deliver similar cargo. The same obstacle is not present in passenger travel – for example, the "Open Skies" Agreement permits an U.S. passenger airplane to fly into Toronto and then proceed to Montreal provided it does not pick up domestic passengers in Toronto.

E-commerce is expected to grow considerably in the next few years, particularly in the area of business to business transactions and, to a lesser extent, in direct orders by households for personal consumption of goods. The latter is expected to generate demand for air courier service for small parcels. It would therefore be appropriate for Canada and the U.S. to review the "Open Skies" Agreement with the view of extending it to air couriers and air cargo movements.

Saskatchewan sees potential for direct air cargo/courier service under "Open Skies" from major U.S. locations. A Saskatchewan-based airport authority is looking into the feasibility of direct air cargo service with various U.S. centres.

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[56] Canada, Transport Canada, *Speaking Notes for Transport Minister David Collenette on the Occasion of the Third Anniversary of "Open Skies"* (Toronto, February 23, 1998).

V CONCLUSION

As described within this Submission, Saskatchewan represents one of the best examples of the impact of intermodal shifts in Canada as a result of the federal legislative framework. The CTA and other federal legislation facilitated the shift of freight from rail to road, from private to publicly funded infrastructure, and from federally regulated to provincially regulated infrastructure. The costs have been enormous to the Province, the communities and the people of Saskatchewan and their businesses. It is important that the federal, provincial and territorial governments learn from Saskatchewan's experience so that harmful intermodal shifts can be minimized in the future.

Saskatchewan's experience demonstrates that the federal government must commit to a viable and effective transportation network by ensuring that any new or amended regulations or legislation that it wishes to implement are subject to thorough analysis and consultations with stakeholders, particularly the Provinces as its constitutional partners. It is also imperative that the federal legislative and regulatory framework balances the interests of federal carriers with provincial and territorial carriers, shippers and consumers.

To address existing and future needs of the transportation network, Saskatchewan urges the Panel to recommend that the CTA incorporate a comprehensive vision for the transportation network. This comprehensive vision must include acknowledgement of the federal government's role in partnership with the Provinces and Territories in providing meaningful and long-term funding towards the National Highway System. This comprehensive vision for the transportation network must include recognition by the federal government of its responsibility for transportation infrastructure under its jurisdictional authority. The federal government cannot remove itself from this responsibility through devolution and expect the Provinces to fulfill the federal government's role in transportation.

All of which is respectfully submitted this 30th day of March, 2001.

Pat Atkinson
Minister of Highways and Transportation

GLOSSARY OF TERMS

ACAP	Airport Capital Assistance Program.
Branchlines	Rail infrastructure that is used to provide a feeder service to mainline railways.
CTA	*The Canada Transportation Act*, S.C. 1996.
CTAgency	The Canadian Transportation Agency.
Cabotage	The carriage of domestic traffic (e.g. local travelers between two domestic points) by a foreign air carrier. Cabotage is prohibited by many countries, including Canada.[57]
CAIP	Canada-Saskatchewan Agri-Infrastructure Program.
CAR308	The proposed *Aircraft Emergency Intervention Services Regulation.*
Carrier	A person who is engaged in the for-hire transport of goods or passengers by any means of transport under the legislative authority of Parliament or the Province and who is subject to any prescribed conditions set out in the enabling legislation or accompanying regulation.
Class I railway	A "railway" within the legislative authority of Parliament and includes branches, extensions, sidings, railway bridges, tunnels, stations, depots, wharfs, rolling stock, equipment, stores, or other things connected with the railway, and communications or signalling systems and related facilities and equipment used for the railway's purposes.
Connecting carrier	A railway company, other than a local carrier, that moves traffic to or from an interchange over a portion of a continuous route in respect to which the railway company and the shipper agree on the movement of the traffic, including the applicable rate.

[57] Canada, Transport Canada, *Canada's Policy for International Scheduled Air Services, Issues for Discussion – Glossary* (Ottawa, February 2001) posted at http://www.tc.gc.ca/pol/en/airpolicy/Air_Policy_Menu_Page.htm

Consumer surplus	The difference between the total value consumers place on all units consumed of a commodity and the payment they must make to purchase the same amount of the commodity.
Co-terminalization	A foreign air cargo carrier could bring goods from its home country (e.g. U.S.) to a first destination in Canada (e.g. Winnipeg) and then proceed to a second destination within Canada (e.g. Regina) to deliver goods from its home country (with no pick-up and delivery of cargo within the receiving country).
Delivery points	Locations where grain is delivered to one or more grain company facilities on a rail line.
Interchange	A place where the line of one railway company connects with the line of another railway company and where loaded or empty cars may be stored until delivered or received by another railway company.
Interswitch	To transfer traffic from the lines of one railway company to the lines of another railway company in accordance with regulations made under section 128 of the CTA.
Modified sixth freedom	Allows a carrier to carry traffic from one foreign country (e.g. Canada) to the same country via the carrier's home country (e.g. U.S.).
Natural monopoly	An industry characterized by economies of scale sufficiently large that one firm can most effectively supply the entire market demand.
Newly emerging industry structures	In Saskatchewan, "newly emerging industry structures" include: airline and rail mergers and impacts thereof; e-commerce and 'just in time' delivery; biotechnology; elevator consolidation; rail line abandonment; expansion of oil and forestry industries; increased north-south trade; new agriculture practices (e.g. plasticulture); information technology; high speed rail; increased containerization; intelligent transportation systems.
NHS	National Highway System.
NTIS	National Transportation Investment Strategy.
PGRF	Prairie Grain Roads Funding Program.

Producer surplus	The excess of the total revenue received by a firm for its output of a product over the minimum that it would be willing to accept to maintain the same level of supply.
Regional Railway	A railway operating under either federal or provincial jurisdiction and includes its branches, extensions, sidings, railway bridges, tunnels, stations, depots, wharfs, rolling stock, equipment, stores, or other things connected with the railway, and communications or signaling systems and related facilities and equipment used for the railway's purposes.
Shipper	A person who sends or receives goods by means of a for-hire carrier or intends to do so.
Shortline railway	A railway within the legislative authority of the Province and includes its branches, extensions, sidings, railway bridges, tunnels, stations, depots, rolling stock, equipment, stores or other things connected with the railway and communications or signalling systems and related facilities and equipment used for the railway's purposes.
Sixth Freedom	This right is not technically a separate right, and is not negotiated between states. It results from the ability of an airline to combine third and fourth freedom rights under different bilateral air transport agreements, such that the airline can offer a service between third countries by way of a connection in its home country. For example, Air Canada can fly a traveller in Los Angeles to Paris by combining rights under the Canada-U.S. and Canada-France agreements, connecting the passenger at Toronto.[58]
Sunk costs	Investments in an industrial facility that could not be recovered if the facility were to be closed.
TEA-21	*Transportation Equity Act for the 21st Century* (U.S.).
Thin membrane surface (TMS)	A thin, soft asphalt mat (44mm) placed on a subgrade to give a dust free, mud free surface on low volume roads with good subgrade materials. It does not have a defined life and will be maintained indefinitely.
Transportation network	This network encompasses all of infrastructure, services, relationships, and information flow that are a part of modern transportation.

[58] *Ibid.*

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